

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

BANK OF AMERICA, N.A.,

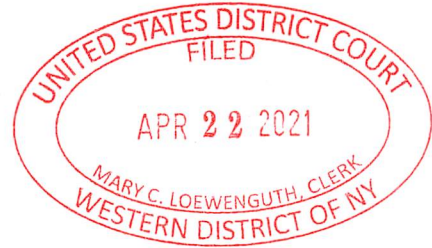
Plaintiff,

v.

19-CV-674 (JLS)

TEMPAY LLC and TEMPAY, INC.,

Defendants.



DECISION AND ORDER

On May 23, 2019, Plaintiff Bank of America, N.A. (“BOA”) commenced this fraud action against TemPay LLC, TemPay, Inc., and Larry Holstein.¹ Dkt. 1. On July 25, 2019, this Court² referred the case to United States Magistrate Judge Hugh B. Scott for all proceedings under 28 U.S.C. § 636(b)(1)(A) and (B). Dkt. 21. On April 21, 2020, this Court accepted the conclusion of a Report and Recommendation (“R&R”) by Judge Scott, resulting in dismissal of the claims against Defendant Holstein.

TemPay LLC moved for summary judgment on January 28, 2021. Dkt. 62. TemPay LLC’s motion argues that the findings of fact and conclusions of law set

¹ This Court assumes the parties’ familiarity with the background and facts of this case, outlined in Judge Schroeder’s R&R (Dkt. 65) and this Court’s prior Decision and Order dated April 21, 2020 (Dkt. 44), and does not repeat them here.

² Judge Vilardo was originally assigned to this case, but it was subsequently reassigned to Judge Sinatra. Dkt. 43. Judge Vilardo referred this case to United States Magistrate Judge Hugh B. Scott. Dkt. 21. The referral was subsequently reassigned to United States Magistrate Judge H. Kenneth Schroeder, Jr. Dkt. 64.

forth in the earlier R&R and Decision and Order establish the absence of any genuine issue of material fact regarding TemPay LLC's affirmative defenses. *See* Dkt. 62-9, at 5-8. BOA did not oppose or respond to the motion.

On March 22, 2021, Judge Schroeder issued an R&R (Dkt. 65) recommending that TemPay LLC's motion for summary judgment be granted in its entirety. Dkt. 65, at 10. The R&R also recommended the Court *sua sponte* dismiss all claims against TemPay, Inc. because summary judgment is warranted on the same basis as TemPay LLC. *Id.* The R&R explicitly stated it "gives notice" to BOA of this *sua sponte* dismissal and that BOA could oppose this recommendation by filing objections. *Id.*

The parties did not object to the R&R, and the time to do so has expired. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2).

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a *de novo* review of those portions of a magistrate judge's recommendation to which a party objects. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. *See Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).

Based on this Court's review and the absence of any objections, the Court accepts and adopts Judge Schroeder's recommendations to grant TemPay LLC's

motion for summary judgment (Dkt. 62) and to grant summary judgment *sua sponte* dismissing the claims against TemPay, Inc.

For the reasons stated above and in the R&R, TemPay LLC's motion for summary judgment (Dkt. 62) is GRANTED; and summary judgment is GRANTED dismissing the claims against TemPay, Inc. The Clerk of Court is directed to close the case.

SO ORDERED.

Dated: April 22, 2021
Buffalo, New York



JOHN L. SINATRA, JR.
UNITED STATES DISTRICT JUDGE